IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5628 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

==========

GUJ MARITIME BOARD & 1 - Petitioner(s)

Versus

BAVA SULEMAN & 2 - Respondent(s)

==========

Appearance :
MR VIREN G DAVE for Petitioner(s) : 1 - 2.
MRS MC THAKKER for Respondent(s) : 1,
MS MD MEHTA AGP for Respondent(s) : 2 - 3.
==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 23/02/2006

ORAL JUDGMENT

1. Invoking Articles 226 and 227 of the Constitution, the petitioners have called into question the order dated 7.4.1986 of the Appellate Authority in Appeal No.23 of 1985 remanding the case of respondent No.1 and the consequent order dated

23.9.1986 of the Controlling Authority under the Payment of Gratuity Act, 1972 by which the petitioners were directed to pay to the said respondent the remaining amount of Rs.6,046.55 ps. of gratuity.

2. The relevant facts, in brief, are that the respondent No.1-employee approached the Controlling Authority under the Payment of Gratuity Act, 1972 vide Application No.55 of 1985 for additional amount of gratuity on the basis of the claim of continuous service under the petitioner No.2-Port Officer, Bedi Port, Jamnagar. He claimed that he had completed continuous service of more than 31 years before his retirement on 30.6.1981. It was contended before the authority that the employee was paid the due amount of gratuity under the Bombay Civil Service Rules. The authority, therefore, rejected the application as the amount of gratuity was paid and the application was made after four-and-half years. That order dated 6.12.1985 was carried in appeal by the employee and the appeal was allowed by order dated 7.4.1986 remanding the application for decision on merits. Therefore, the Controlling Authority was again called upon to decide the application as though the provisions of the Payment of Gratuity Act were applicable in the facts of the case. Then, the second impugned order dated 23.9.1986 awarding additional amount of gratuity was made on the basis that that Act was applicable to the petitioner No.2 since “Port” was covered by the provisions of sub-section

(3) of section 1 of the Payment of Gratuity Act, 1972.

3. According to the undisputed facts stated in the petition, prior to 5.4.1982, the administration, control and management of minor ports in the State of Gujarat was looked after by the State Government through its Ports Department (Directorate of Ports). Thereafter, the petitioner No.1, i.e. the Gujarat Maritime Board, was constituted under the Gujarat Maritime Board Act, 1981 with effect from 5.4.1982 and, since then, every employee serving under the State Government immediately before such day solely or mainly for or in connection with the affairs of minor ports became an employee of the petitioner No.1 under the provisions of clause (f) of sub-section (1) of section 20 of the Gujarat Maritime Board Act, 1981. The respondent No.1 was working as a Gunner at Bedi Port under the Ports Department and had received all the benefits as such. He had retired on reaching the age of superannuation on 30.6.1981 as an employee of the State Government and was paid all the retirement benefits as per the Rules applicable to the employees of the State Government.

4. In the above facts and circumstances, the petitioner No.1 could not have been fastened with any liability regardless of whether the Payment of Gratuity Act, 1972 applied to it or not. It is rightly contended in the petition that the employees of the State Government who were holding a civil post

under the State Government were expressly excluded from the definition of “employee” as given in section 2 (e) of the Payment of Gratuity Act, 1972 and hence they were not entitled to gratuity under the provisions of that Act. Thus, the impugned orders had resulted into an obvious miscarriage of justice.

5. Learned counsel Mr.Manoj Popat, appearing for the employee, submitted that the last effective order under challenge being an original order of the Controlling Authority and there being an express provision for appeal, the petition was not required to be entertained and ought to be rejected only on the ground of efficacious alternative statutory remedy available to the petitioners. It would be unfair and improper to invoke the bar of alternative remedy after 20 years of pendency of the petition. Therefore, in the above facts, the petition is allowed and the impugned orders dated 7.4.1986 and 23.9.1986 at Annexure-C and D are set aside. Rule made absolute with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)